

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6657 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and

MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PROFESSAR K S SHASTRI

Versus

DR Y SHRIVASTAVA

Appearance:

MR SN SHELAT for Petitioners

M/S TRIVEDI & GUPTA for Respondent No. 1

MR JV JAPEE for Respondent No. 3

CORAM : MR.JUSTICE C.K.THAKKER and

MR.JUSTICE R.P.DHOLAKIA

Date of decision: 28/01/98

ORAL JUDGEMENT

This petition is filed by two petitioners for an appropriate writ, direction and/or order setting aside the order dt. August 23, 1990 passed by Lokayukta, Gujarat State, respondent no.3 herein in Case No. 1/90. On 23rd August 1990, respondent no.3 passed an order rejecting the contention raised by the petitioners regarding the jurisdiction of Lokayukta by holding that it should be premature to decide the contentions raised by the petitioners at that stage and complaint filed by

the complainant could not be dismissed on such objection.

It was an interim order, but as the contention of the petitioners was regarding jurisdiction of respondent no.3 to entertain, deal with and decide the complaint the petitioners approached this court by filing this petition. On September 6, 1990, the matter was placed before the Single Judge who was of the view that the matter was of great importance. He, therefore, directed the office to place the matter before the Acting Chief Justice so as to place it before a Division Bench. The matter was accordingly placed before a Division Bench. On September 12, 1990 the Division Bench admitted the matter and following order was passed:

"Rule. By way of ad-interim relief further proceedings in Case No. 1 of 1990 before the Lokayukta, Gujarat State are ordered to be stayed so far as petitioner no.2 is concerned.

As regards petitioner no.1, it will be open to the Lokayukta to complete the investigation and/or inquiry but he is directed not to submit his report u/s 12 of the Act."

It appears that the above interim order was not challenged by respondent no.3 but petitioner no.1 herein in whose favour the stay was not granted, approached the Hon'ble Supreme Court by filing Special Leave Petition (Civil) 13457 of 1991. On September 3, 1991, the following order was passed by the Apex Court.

"We are of the view that there should be no interference with the present inquiry by the Lokayukta but as and when he completes his investigation, he should furnish a copy of his report to the High Court where, we are told, a petition for various subject-matters being S.C.A.No.3654 of 1985 is pending; and the Government is directed not to make any final orders on the basis of the report of the Lokayukta until the petition is disposed of.

A copy of this order be communicated to the Lokayukta as also the Chief Secretary to the State Government."

On April 24, 1995, after hearing the parties, the Hon'ble Supreme Court passed following order modifying its earlier order;

"After hearing learned counsel for the parties we modify our order of 3.9.91 as follows:
The Lokayukta may complete his

investigation which he has already undertaken and also complete his report on the investigation. However, he will keep the report in a sealed cover with himself and not send it either to the authority under the Gujarat Lokayukta Act nor will be submit it to the High Court."

Finally, on January 8, 1996, the following order was passed and Special Leave Petition was disposed of.

"Heard learned counsel for the parties.

During the pendency of the writ petition, we deem it appropriate that the order made by this Court on 24th April, 1995 reading thus:

"The Lokayukta may complete his investigation which he has already undertaken and also complete his report on the investigation. However, he will keep the report in a sealed cover with himself and not send it either to the authority under the Gujarat Lokayukta Act nor will he submit it to the High Court."

shall remain in operation. The special leave petition is disposed of accordingly.

The High Court is requested to dispose of the writ petition expeditiously."

Mr.S.N.Shelat, learned counsel for the petitioner submitted that two questions arise for determination of this court;

(1) In case of petitioner No.1 in the facts and circumstances of the case, respondent no.3 ought not to have initiated proceeding. Relying on several paragraphs of the petition and drawing the attention of the court to sub-section (4) of Section 10 of the Gujarat Lokayukta Act 1986, (hereinafter referred to as "the Act"), he contended that third respondent ought to have exercised his discretion by refusing to investigate into complaint which was registered as Case No.1/90. By not doing so, he committed an error of law as well as of jurisdiction.

(2) In case of petitioner no.2, however, he submitted that respondent no.3 has no jurisdiction over him as his case was not covered under the Act. By entertaining a complaint and by initiating

proceeding against him, respondent no.3 has committed a jurisdictional error which requires to be corrected.

The petition is called out for final hearing. We have heard the learned advocates for the parties.

At this stage, an affidavit-in-reply is filed by the Registrar of Respondent No.3 on January 19, 1998. In the first para itself, it is stated in order dt. 23rd of August 1990, the then Lokayukta (Hon'ble Mr.Justice D.H.Shukla) did not decide any point against the petitioners. It is further stated that respondent no.3 "is willing to decide" the whole matter on merits finally and come to the conclusion as required under Sec.10 of the Act. The respondent no.3 is willing to conduct the investigation on the facts and materials that may be produced by the parties and to come to the conclusion whether the case requires to be discontinued under Sec.10(4) or (5) of the Act after forming an opinion and giving reasons in writing regarding the discontinuance of the investigation. The Deponent has also stated that if the parties agree to produce all the relevant facts and materials, respondent no.3 is ready and willing to consider the entire issue on merits. According to the deponent, it is within exclusive jurisdiction of the Lokayukta to determine the question whether a person is or is not a "public functionary" and whether the case falls under Section 2(a), (b) or (c) of the Act.

Having given anxious consideration to the facts and circumstances of the case, in our opinion, it may not be necessary to enter into larger question. In our opinion, the petition can be disposed of considering the questions raised by the learned counsel for the petitioners referred to above.

So far as the petitioner no.1 is concerned, it is not even contended by Mr.Shelat that respondent no.3 has no jurisdiction. Petitioner No.1 was at the relevant time "Vice Chancellor" of the Gujarat University. Clause (d) of sub-section (7) of Section 2 would obviously apply in his case. "Public functionary" is defined as a person who holds or has held an office of Vice-Chancellor of a University established by law in the State of Gujarat. It is an admitted fact that the case of petitioner no.1 falls under Section 2(7) (d) of the Act and hence respondent no.3 has jurisdiction to entertain a complaint against him.

The question then remains as to whether power

under sub-section (4) of Section 10 of the Act should be exercised by respondent no.3. Section 10 provides for investigation of complaints. Sub-section (4) thereof, however, enables Lokayukta in his discretion to refuse to investigate or cease to investigate any complaint in certain circumstances. The contention on behalf of petitioner no.1 is that this is eminently a fit case in which power under sub-section (4) of Section 10 of the Act ought to have been exercised by respondent no.3 by refusing to investigate into the matter.

In our opinion, however, the stand taken on behalf of respondent no.3 is well founded that power is conferred by a competent legislature upon Lokayukta and such discretion must be exercised by him. When on behalf of Lokayukta affidavit is filed by the Registrar, in which it was stated that Lokayukta will consider the matter on merits and also whether to proceed with the case, this court is not inclined to exercise extraordinary power under Art.226 of the Constitution of India. In our opinion, the stand taken by respondent No.3 is reasonable. We, therefore, reject the contention of the learned counsel for the petitioner. As stated in the affidavit-in-reply by the Registrar, the third respondent will consider the material on record in the light of relevant provisions of the Act and take appropriate action in accordance with law.

Our attention was invited by Mr.Shelat to a decision of the Hon'ble Supreme Court in Institution of A.P.Lokayukta/UPA-Lokayukta, A.P. and others vs. T.Rama Subba Reddy and another, (1997) 9 SCC 42. In our opinion, however, it is not necessary to finally decide the question of jurisdiction of respondent no.3 as Mr.Japee, learned counsel for respondent no.3 has stated at the Bar that respondent No.3 will decide the question of jurisdiction over petitioner no.2 at the threshold. He further submitted that the said question will be decided by respondent no.3 in the light of the decision of the Supreme Court without being influenced by earlier order dt.23.8.1990 impugned in the present petition.

In view of the said statement, in our opinion, this petition does not survive and deserves to be disposed of at this stage. Respondent no.3 will now decide the question of jurisdiction in respect of a complaint against petitioner no.2 at the threshold without being influenced by earlier decision and in accordance with law in the light of the decision of the Supreme Court referred to hereinabove.

It is open to the parties to rely on the necessary facts as also to produce the relevant documents/material on the basis of which the respondent no.3 will decide the matter. Petition is accordingly disposed of. Rule discharged. No order as to cost. Liberty to apply in case of difficulty.

Dt.28.1.1998. (C.K.THAKKER J.)

(R.P.DHOLAKIA J)

OK/GHB/T